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OF INDIA

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EDITORIAL

Easing of bank interest rates will engender faster growth: Jaitley

PRIME Minister Narendra Modi called for the need to establish Indian banks that rank among the Top 10 in the world.

He said the banking sector of a country mirrors its economic rise. Japan and China had banks in the top ten banks of the world during their economic rise, he added. At present, the country's largest lender, State Bank of India, is ranked in the 60s in terms of asset size in the world. It is the only Indian bank among the world's largest 100 lenders.

Experts have called for consolidation of public sector banks in India to create bigger banks. But this has not made any headway despite various reports advocating merger of various small public sector banks.

Finance Minister Arun Jaitley described the decision of RBI to cut key policy rate by 0.25 per cent as an "important turning point" and hoped it would engender faster growth. "After two years that interest rates are going to move downwards and market reactions also have

been much better. I think this will leave somewhat more money in the hands of consumers. Hopefully (it will) increase spending, make loans cheaper," he said. Softer loans, Jaitley said, will encourage faster growth of consumers' goods sector which has been witnessing relatively slower growth in the last two-three months.

Arundhati Bhattacharya, Chairman of State Bank of India, said, "We believe that this RBI cut may be just the beginning of a rate easing cycle... Base rate is expected to fall faster than expected." Mahesh Nandurkar, Executive Director at CLSA, says banks are likely cut deposit rates as the credit demand remains weak. Besides, falling commodity prices will reduce the demand for working capital from corporate and banks would have adequate liquidity, he added.

We are pleased to release this issue of the third volume of the CMA e-Bulletin for our readers and we hope you enjoy reading this issue. We look forward to your valuable suggestions and comments which will help us improve this publication.

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INDUSTRY

News

➤ The Companies (Cost Records & Audit) Amendment Rules, 2014

MCA has notified the much awaited amendments to Cost Rules. Cost Records applicable if turnover exceeds Rs. 35 crores
Cost Audit applicable if turnover exceeds Rs. 50 crores for regulated industry & Rs. 100 crores for others
Rules at:
http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_01012014.pdf

➤ Road Map Revised for Implementation of Indian Accounting Standards for Companies Other Than Banking Companies, Insurance Companies and NBFCs

In pursuance of the Budget statement, the Ministry of Corporate Affairs, Government of India after wide consultations with various stakeholders and regulators, has drawn-up a revised Road Map for companies other than Banking Companies, Insurance Companies and Non-Banking Finance Companies (NBFC's) for implementation of Indian Accounting Standards (Ind AS) converged with the International Financial Reporting Standards (IFRS).

The Indian Accounting Standards (Ind AS) shall be applicable to the companies as follows:

- (i) On voluntary basis for financial statements for accounting periods beginning on or after April 1, 2015, with the comparatives for the periods ending 31st March, 2015 or thereafter;
- (ii) On mandatory basis for the accounting periods beginning on or after April 1, 2016, with comparatives for the periods ending 31st March, 2016, or thereafter, for the companies specified below: (a) Companies whose equity and/or debt securities are listed or are in the process of listing on any stock exchange in India or outside India and having net worth of Rs. 500 Crore or more. (b) Companies other than those covered in (ii) (a) above, having net worth of Rs. 500 Crore or more. (c) Holding, subsidiary, joint venture or associate companies of companies covered under (ii) (a) and (ii) (b) above.
- (iii) On mandatory basis for the accounting periods beginning on or after April 1, 2017, with comparatives for the periods ending 31st March, 2017, or thereafter, for the companies specified below: (a) Companies whose equity and/or debt securities are listed or are in the process of being listed on any stock exchange in India or outside India and having net worth of less than rupees 500 Crore. (b) Companies other than those covered in paragraph (ii) and paragraph (iii)(a) above that is unlisted companies having net worth of rupees 250 crore or more but less than rupees 500 Crore. (c) Holding, subsidiary, joint venture or associate companies of companies covered under paragraph (iii) (a) and (iii) (b) above. However, Companies

whose securities are listed or in the process of listing on SME exchanges shall not be required to apply Ind AS. Such companies shall continue to comply with the existing Accounting Standards unless they choose otherwise.

(iv) Once a company opts to follow the Indian Accounting Standards (Ind AS), it shall be required to follow the Ind AS for all the subsequent financial statements.

(v) Companies not covered by the above roadmap shall continue to apply existing Accounting Standards prescribed in Annexure to the Companies (Accounting Standards) Rules, 2006.

Read more at:

<http://pib.nic.in/newsite/PrintRelease.aspx?relid=114300>

Source: Press Information Bureau Government of India, MCA | January 02, 2015

➤ November infrastructure output hits 5-month high of 6.7 per cent

The growth rate of eight core sector industries rose to five-month high of 6.7 per cent in November on the back of better output in coal, refinery products, electricity and cement.

The eight core sector industries -- coal, crude oil, natural gas, refinery products, fertiliser, steel, cement and electricity -- grew by 3.2 per cent in November last year

Read more at:

http://economictimes.indiatimes.com/articleshow/45704724.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Source: PTI | 31 Dec, 2014

➤ **Now, post offices can provide ATM cards**, account statements
Post offices moved a step closer to becoming banks. The government has allowed certain eligible branches to issue ATM cards to their account holders and also account statements instead of giving out passbooks, as most private sector banks do.

Read more at:

http://economictimes.indiatimes.com/articleshow/45697591.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Source: Economic Times | 31 Dec, 2014

➤ Government approves 8 FDI proposals worth Rs 35 crore

Based on the recommendations of Foreign Investment Promotion Board (FIPB)...government has approved 8 proposals of Foreign Direct Investment amounting to Rs 34.77 crore approximately," an official release said today. The UK-based CSC Computer Sciences International Operations has sought permission for setting up a proposed LLP with an investment of about Rs 30 crore.

Read more at:

http://economictimes.indiatimes.com/articleshow/45689232.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Source: PTI | 30 Dec, 2014

➔ FDI in India jumps 25% in April-October FY'14: Nirmala Sitharaman

Inflows of foreign direct investment into India rose by about 25 per cent to USD 17.35 billion in the April-October period of the current fiscal, Commerce and Industry Minister Nirmala Sitharaman said. Improvement in the macroeconomic situation and investor sentiment on account of a series of steps taken by the new government helped attract higher FDI, she said. In April-October 2013, the country had received USD 13.82 billion foreign inflows.

Read more at:

http://economictimes.indiatimes.com/articleshow/45674668.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Source: PTI | 29 Dec, 2014

➔ Forex reserves stand at nearly \$320 billion

India's foreign exchange reserves in the week to December 19 surged by a whopping \$3.163 billion to \$319.997 billion on the back of a massive jump in foreign currency assets. Last week, reserves had increased by \$2.172 billion to \$316.833 billion, RBI data showed. The foreign currency assets (FCAs), a major constituent of overall reserves, jumped by \$3.310 billion to \$295.670 billion in the week ended December 19.

Read more at:

http://economictimes.indiatimes.com/articleshow/45651473.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Source: PTI | 26 Dec, 2014

➔ Ghaziabad to get smart in six months: Ghaziabad Development Authority

The city is on the road to become hi-tech in about six months time, at least that's what the Ghaziabad Development Authority claims. The GDA is installing two Wi-Fi corridors of a total length of 65 km for motorists and area residents. It is installing 350 towers all over the city, each equipped with several video cameras, through which cops in a hi-tech control room will watch every move law breakers might make. About 150 of these towers have already been set up, which will also provide 4G internet services. There will be 20 jumbo-sized LED video screens, 20 ft x 20 ft, put up at different places across the city, motorists can follow real time information on the volume of traffic on different routes, and accordingly choose which route to take. Sixteen smaller screens, of size 3x4 feet each,

will be put up around UP Gate, where the traffic comes in from Delhi via NH-24.

Source: The Times of India | 22 Dec, 2014

➔ Government launches pilot project on conversion of streetlights to LED

Aiming at turning Delhi into a smart city, the Union Ministry of Power here today launched a pilot project on conversion of street-lighting from conventional system to an energy-efficient and environment-friendly LED type. With the project, helmed by the Union Ministry of Power, the government also seeks to save about 25 crore units of electricity consumption and Rs 700 crore. The pilot system was launched by Union Urban Development Minister M Venkaiah Naidu and Union Power, Coal and New and Renewable Energy Minister Piyush Goel in Naraina Vihar area in north Delhi. The LED street lighting system being energy efficient would be extended to the whole of Delhi where there are nearly 5 lakhs streetlight points.

Source: Economic Times | 20 Dec, 2014

➔ Crank up public spending to revive growth - chief economic adviser

India should increase public spending to boost economic growth in the medium term as there have been no signs of private investment picking up, chief government economic adviser Arvind Subramanian said.

Source: Reuters 19 Dec 2014

➔ Surat partners with Microsoft to become a Smart City

SMC has been one of the early technology and e-Governance adopters and the city has selected Microsoft as its partner of choice for process automation and citizen services.

Source: Economic Times | 19 Dec, 2014

➔ India signs 625 million euro loan agreement with Germany

India has signed loan agreement with Germany for financial assistance to Green Energy Corridors project under Indo-German bilateral development cooperation.

Source: PTI | 18 Dec, 2014

➔ Haryana government gives approval for Metro rail extension

Haryana Chief Minister Manohar Lal Khattar today gave in-principle approval for the extension of Metro Rail project from YMCA Chowk, Faridabad to Ballabhgarh. Besides this, he also directed to explore the possibilities of Faridabad-Gurgaon Metro link project.

Source: PTI | 17 Dec, 2014

➔ Light metro rail in Indore & Bhopal likely

before 2018: Minister

The proposed light metro rail system in Indore and Bhopal cities are planned to be launched before 2018, Madhya Pradesh minister Kailash Vijaywargiya said. The light metro services will then be introduced in Jabalpur and Gwalior to meet the growing demand of a viable public transport system.

Source: PTI | 17 Dec, 2014

➤ Rapidly cooling inflation supports case for rate cut

India's wholesale price index showed no increase in November for the first time in near 5-1/2 years as oil prices tumbled, building a case for the Reserve Bank to start lowering interest rates early next year to help prop up economic growth.

Source: Reuters Dec 15, 2014

➤ Seven medium-sized Japanese firms to invest in Gujarat: Japan External Trade Organization

At least seven new medium-sized Japanese companies plan to set up manufacturing plants in the Japanese Industrial Cluster at Vithalapur village in the district. Vithalapur and the nearby Hansalpur village have emerged as Gujarat's auto hub, attracting Japanese auto giants to set up their plants.

Source: PTI | 4 Dec, 2014

➤ India to set up pipeline link to Bangladesh

India and Bangladesh are looking at a comprehensive partnership in the energy sector even as the neighbour is keen on joining the Turkmenistan-Afghanistan-Pakistan-India natural gas pipeline. Also, Indian refineries are looking at possibilities of selling petroleum products to the South Asian neighbour through a pipeline. "With the signing of the SAARC (South Asian Association for Regional Cooperation) framework for energy cooperation, it has become a reality. Besides, export from Turkmenistan is attractive," said Tawfiq-e-Elahi, advisor to Prime Minister, energy and mineral resources, Bangladesh. To begin with, diesel is likely to be transported through the pipeline. "A feasibility study for the pipeline is currently underway," a senior petroleum ministry official said. The pipeline is estimated to cost Rs 200 crore and would have a capacity of one million tonne. It could also be further extended into Myanmar. India already sells petroleum products in Nepal, Bangladesh and Mauritius.

Source: Business Standard | December 2, 2014

BANKING**Notifications/Circulars/News****➤ Allahabad Bank cuts rate on retail term deposits to 8.75%**

State-run Allahabad Bank has cut interest rate on retail term deposits having maturity period of one year to less than five years by 0.15 per cent to 8.75 per cent.

Source: PTI | Dec 31, 2014

➤ Withdrawal of all old series of Banknotes issued prior to 2005

RBI has been decided to extend the date for exchanging the pre-2005 banknotes to June 30, 2015.

Source: Notification No. RBI/2014-15/373 DCM (Plg) No.G-8 /3004/10.27.00/2014-15 dated: December 31, 2014

➤ ICICI Bank adopts village in Gujarat to make it digital

ICICI Bank announced to adopt Akodara village of Sabarkantha district under its 'Digital Village' pilot project to boost Centre's 'Digital India' drive. The announcement was made by ICICI Bank Chairman and Managing Director Chanda Kochhar during her courtesy meeting with Gujarat Chief Minister Anandi Patel at Gandhinagar. Kochhar briefed Patel about how the village will be covered through networking and wi-fi facility, stated an official press release of state government. During the meeting, Patel urged the ICICI Bank chief to contribute in building toilets in villages and help the government in its fight against malnutrition under corporate social responsibility (CSR).

Source: PTI | Dec 30, 2014

"In case of an account standing at any post office with a core banking solution platform in place, the Post office Savings Bank shall issue ATM or debit card to the account holder on payment of such fee as may be prescribed by the Central Government." Currently, 676 post offices are on CBS. Four head post offices (Delhi, Mumbai, Kolkata and Chennai) have gone live on ATM. This entire project is part of the Rs.4, 909-crore IT modernization project of the Department of Posts. The department aims to take the ATM network to 2,800 by 2015.

Read more at: <http://www.thehindubusinessline.com/news/post-offices-to-issue-atmcumdebit-cards-for-savings-account-holders/article6739268.ece>

➤ RBI eases norms for Indian companies investing abroad

Encouraged by comfortable forex reserves, Reserve Bank of India today relaxed the norms for Indian companies investing abroad by doing away with the ceiling for raising funds through pledge of shares, domestic and overseas assets. "It has been decided that banks may permit creation of charge pledge on the shares of the JV/WOS... (irrespective of the level) of an Indian party in favour of a domestic or overseas lender for securing the funded or non-funded facility...under the automatic route," RBI notification said while modifying the Overseas Direct Investments norms.

Read more at:

<http://economictimes.indiatimes.com/news/economy/policy/rbi-eases-norms-for-indian-companies-investing-abroad/article->

show/45679657.cms

Source: PTI | Dec 30, 2014

➔ Overseas Direct Investments by Indian Party – Rationalization / Liberalization

In order to grant more flexibility to the Indian party, it has been decided to further liberalize certain regulations of the Notification as under:

- (i) Creation of charge on shares of JV / WOS / step down subsidiary (SDS) in favour of domestic / overseas lender
- (ii) Creation of charge on the domestic assets in favour of overseas lenders to the JV / WOS / step down subsidiary
- (iii) Creation of charge on overseas assets in favour of domestic lender.

Read in detail at:

<http://www.rbi.org.in/scripts/NotificationUser.aspx?Id=9432&Mode=0>

Source: Notification No. RBI/2014-15/371 A.P. (DIR Series) Circular No.54 dated: December 29, 2014

➔ Levy of penal charges on non-maintenance of minimum balances in savings bank accounts

In this connection, a reference is invited to paragraph 30 of Part B of First Bi-monthly Monetary Policy Statement, 2014-15 announced on April 1, 2014, regarding 'Developmental and Regulatory Policies' proposing certain measures towards consumer protection. One of the proposals contained therein was that banks should not take undue advantage of customer difficulty or inattention. Instead of levying penal charges for non-maintenance of minimum balance in ordinary savings bank accounts, banks should limit services available on such accounts to those available to Basic Savings Bank Deposit Accounts and restore the services when the balances improve to the minimum required level. A reference is also invited to the recommendations of Damodaran Committee on customer service in banks which, inter-alia, recommended that 'banks should inform the customer immediately on the balance in the account breaching minimum balance and the applicable penal charges for not maintaining the balance by SMS/email/letter. Further, the penal charges levied should be in proportion to the shortfall observed'.

Source: Notification No. RBI/2014-15/363 (DBR.RRB. BC.No.55/03.05.33/2014-15) dated: December 22, 2014

➔ Banks hiring consultancies to do corporate investigations of non-performing loans

A Kolkata-based company recently said it's unable to repay a loan of around Rs 2,000 crore to a consortium of public sector banks, claiming it suffered a loss of around Rs 1,000 crore because its vendors took it for a ride. The banks promptly hired a corporate investigator to get to the bottom of the matter and it turned out to be a case of fraud. Often, these forensics reports

have become the basis for CBI and police investigations, as they have unearthed several cases of fraud. Indian banks are increasingly hiring consultancies to do corporate investigations and forensic audit of their non-performing loans, after a rap on their wrist by the Reserve Bank of India (RBI) and the ministry of finance.

Source: Economic times | 22 Dec 2014

➔ Five basic rights for bank customers laid down by RBI

The Charter of Customers' Rights released by RBI lays down 5 basic rights for a bank customer. One can file a complaint if these rights are violated. The rights of customers as notified by the RBI are:

- Right to fair treatment
- Right to suitability
- Right to privacy
- Right to grievance redressal and compensation
- Right to transparency, fair and honest dealing

Read more at:

http://economictimes.indiatimes.com/articleshow/45584445.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Source: Economic times | 22 Dec 2014

➔ Non-Cooperative Borrowers

A non-cooperative borrower is one who does not engage constructively with his lender by defaulting in timely repayment of dues while having ability to pay, thwarting lenders' efforts for recovery of their dues by not providing necessary information sought, denying access to assets financed / collateral securities, obstructing sale of securities, etc. In effect, a non-cooperative borrower is a defaulter who deliberately stone walls legitimate efforts of the lenders to recover their dues. In this connection, banks/FIs should take the following measures in classifying/declassifying a borrower as non-cooperative borrower and reporting information on such borrowers to Central Repository of Information on Large Credits (CRILC).

Source: Notification No. RBI/2014-15/362 (DBR.No.CID. BC.54/20.16.064/2014-15) dated: December 22, 2014

➔ FDI in services sector dips 7.5% to \$1.22 billion during April-September

Foreign direct investment in the country's services sector dipped 7.5 per cent to USD 1.22 billion during the first half of the current financial year. The services sector, which includes banking, insurance, outsourcing, R&D, courier and technology testing, had received FDI worth USD 1.32 billion during April-September 2013-14, the data by Department of Industrial Policy and Promotion shows. The services sector contributes over 60 per cent to India's GDP. In 2013-14, foreign investment in the sector fell to USD 2.2 billion from USD 4.83 billion in 2012-13. The government is taking several measures to boost foreign inflows, according to an official.

Source: PTI | Dec 21, 2014

➔ F-TRAC – Counterparty Confirmation

A reference is invited to RBI circular IDMD.PCD. 13 /14.01.02/2013-14 dated June 25, 2014 regarding reporting of OTC trades in Commercial Papers (CPs) and Certificate of Deposits (CDs); and OTC repo trades in corporate debt securities, CPs, CDs and non-convertible debentures (NCDs) of original maturity less than one year on F-TRAC - the reporting platform of Clear corp Dealing Systems (India) Ltd. (CDSIL). As per extant guidelines, the above-mentioned trades have to be physically confirmed by the back offices of the counterparties. In F-TRAC, both the counterparties individually report their respective sides of the trades and the trades are validated for trade details before matching by F-TRAC. This ensures implicit confirmation by both counterparties. Further, the details of the transactions are available on the F-TRAC system.

On a review, it has been decided to waive the requirement of exchange of physical confirmation of trades matched on F-TRAC subject to the following conditions:

- i. Participants entering into one time bilateral agreement for eliminating the exchange of confirmation;
- ii. Participants adhering to the extant laws such as stamp duty as may be applicable; and
- iii. Participants ensuring adherence to a sound risk management framework and complying with all the regulatory and legal requirements and practices, in this regard.

Source: Notification No. RBI/2014-15/361 FMRD.

F MID.01/14.01.02/2014-15 dated: December 19, 2014

➔ Jindal Steel & Power Ltd raises Rs 1,000 crore from NCDs to Kotak Mahindra

Jindal Steel & Power Ltd has allotted 10,000 privately placed unsecured non-convertible debentures (NCDs) amounting to Rs 1,000 crore to Kotak Mahindra Bank. The company informed the BSE that its “executive sub-committee of the Board of Directors has, at its meeting held on December 18, 2014, allotted 10,000 Privately Placed Rated Redeemable Unsecured Non Convertible Debentures for cash at par aggregating to Rs 1,000 crore in three series to Kotak Mahindra Bank Ltd.” Commenting on the development, a JSPL spokesperson said: “The company has always been engaged in raising money through appropriate instruments for financing the company’s operations considering the funding requirement and cost optimization of funds; the NCD announced today is one such financial instrument.”

Read more at:

http://economictimes.indiatimes.com/articleshow/45572996.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

Source: Economic Times | 19 Dec, 2014

➔ Post offices to issue ATM-cum-debit cards for savings account holders

Post office savings bank accounts can now be operated through ATMs. The Centre has amended the Post Office Savings Bank General Rules accordingly following the Budget announcement in this regard. This facility, however, will be available only in post offices that are on core banking solution (CBS) platform. A notification said: “In case of an account standing at any post office with a core banking solution platform in place, the Post office Savings Bank shall issue ATM or debit card to the account holder on payment of such fee as may be prescribed by the Central Government.” Currently, 676 post offices are on CBS. Four head post offices (Delhi, Mumbai, Kolkata and Chennai) have gone live on ATM. This entire project is part of the ₹4,909-crore IT modernization project of the Department of Posts. The department aims to take the ATM network to 2,800 by 2015.

Read more at:

<http://www.thehindubusinessline.com/news/post-offices-to-issue-atm-cum-debit-cards-for-savings-account-holders/article6739268.ece>

➔ Persons already having bank account need not to open a fresh one to avail benefits of the Pradhan Mantri Jan Dhan Yojana

Government said persons already having bank account need not to open a fresh one to avail benefits of the Pradhan Mantri Jan Dhan Yojana. “A person who is already having a bank account with any bank need not have to open a separate account under PMJDY. He/she will just have to get issued a RuPay card in his existing account to get benefit of accidental insurance,” a Finance Ministry statement said. The overdraft facility can be extended in existing account, it said. Accidental insurance of Rs 1 lakh will be available to all RuPay card holders between 18-70 years. They will need to use their RuPay card once in 45 days of receipt of the card to get the benefit. The accidental claim intimation should be given to bank within 30 days from the date of accident, it added. For life insurance coverage, one person per family will get a single cover of Rs 30,000 on one card only despite having multiple accounts/cards.

Source: PTI | 17 Dec 2014

➔ PSBs told to offer net, mobile banking services in Hindi also

Continuing with its Hindi overdrive, the home ministry has asked finance ministry to ensure that all net banking web portals and mobile banking applications of nationalized banks are offered in Hindi apart from English, while e-mails and SMS alerts are sent to customers in Hindi as well. The home ministry first and foremost wants ATM machines to print receipts in Hindi apart from English. It also wants option for customers to work in Hindi on

internet banking web portals. The home ministry has also pointed out that mobile banking applications are not available in Hindi and it also needs to be ensured that e-mails and SMS alerts sent to customers by banks should be in Hindi as well.

Source: Economic Times | 17 Dec 2014

➔ SBI and Amalgamated Plantation ink MOU to provide loan to small tea growers

India largest banker, State Bank of India on Monday inked an MOU to provide credit to small tea growers operating with Amalgamated Plantations Private Limited (APPL). APPL is a Tata Enterprise. B Sriram, managing director (national banking group), SBI who was in Guwahati on Monday told ET, "A tripartite MOU involving the bank, APPL and small tea growers was signed." He said APPL has around 31,000 small tea growers which supply green leaf. "To start with the project will taken up on pilot basis in couple of locations."

Source: Economic times | 16 Dec 2014

SERVICE TAX

Notifications/Circulars

➔ Govt. empowers CMAs / CAs nominated as special auditors, to conduct Service Tax Audits

As per notification no. 23/2014- Service Tax dated: 5th December, 2014, every assessee, shall, on demand make available to the officer empowered under sub-rule (1) or the audit party deputed by the Commissioner or the Comptroller and Auditor General of India, or a cost accountant or chartered accountant nominated under section 72A of the Finance Act, 1994:

- (i) the records maintained or prepared by him in terms of sub-rule (2) of rule 5;
- (ii) the cost audit reports, if any, under section 148 of the Companies Act, 2013 (18 of 2013); and
- (iii) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961),

for the scrutiny of the officer or the audit party, or the cost accountant or chartered accountant, within the time limit specified by the said officer or the audit party or the cost accountant or chartered accountant, as the case may be.

Case Laws

➔ Service Tax: Delay caused in filing appeal due to 'shifting of branch office and in process, misplacement of records' (which is supported by affidavit of Branch Manager) is condonable

Section 86 of the Finance Act, 1994, read with section 35B of the Central Excise Act, 1944 and section 129A of the Customs Act, 1962 - Appeals - Condonation of Delay - Appellate Tribunal - Assessee sought condonation of 69 days in filing appeal before

Tribunal on ground that 'there was shifting of branch office and in process, records were misplaced', which led to delay - HELD : Mere bald allegations are not sufficient for condonation of delay - However, in this case, Branch Manager of assessee-company filed an affidavit confirming shifting of branch office and misplacing of relevant papers - Further, conduct of assessee does not indicate inaction or negligence in pursuing matter - Hence, explanation offered by assessee for marginal delay of 69 days constitutes a sufficient cause for condonation of delay and deserves to be accepted [Para 6] [In favour of assessee]

Circulars and Notifications: [Circular No. 117/11/2009-ST, dated 30-10-2009](#)

Source: *High Court of Madras, Riya Travels and Tours India (P) Ltd. v. Customs, Excise & Service Tax Appellate Tribunal, Chennai, R. Sudhakar And R. Karupiah, JJ., C.M.A. NO. 2679 OF 2014 dated: October 30, 2014 [(2014) 52 taxmann.com 298 (Madras)]*

➔ Before raising demand from sub-contractor department had to verify whether tax was paid by main contractor

Service Tax : If service provider (sub-contractor) claims that service tax has been deducted and paid by service recipient (principal contractor) on his behalf, department must verify said claim before raising demand

Section 68, read with sections 65(7), 65(68), 65B(12) and 73 of the Finance Act, 1994 - Payment - Service Tax - Stay Order - Assessee provided 'manpower supply services' to RNS - Assessee claimed that RNS was principal contractor and had deducted and paid service tax to department - Assessee furnished a letter sent by RNS to department along with ST-3 returns, challans, etc. - Tribunal ordered full pre-deposit of Rs. 15 lakhs and disregarded evidences on ground that they were not furnished before original authority - Assessee argued that sub-contractors were liable to service tax only after Circular dated 23-8-2007 and pleaded financial hardship, revenue neutrality, etc. - HELD : RNS had furnished relevant documents before adjudicating authority; hence, assessee's stand of payment by RNS was not a new one - If records are available with department, department should have verified assessee's claim of payment by M/s. RNS - Since assessee had discharged service tax in respect of other contracts, assessee's claim was prima facie bona fide and therefore, pre-deposit was reduced to Rs. 5 lakhs - Appeal was restored with a direction to verify records produced by assessee [Paras 7 to 10] [In favour of assessee] Circulars and Notifications : [Circular No. 96/7/2007-S.T., dated 23-8-2007, K. Jayachandran for the Appellant. T. Chandrasekaran for the Respondent.](#)

Source: *HIGH COURT OF MADRAS, Sri Mahaavir Enterprises v. Customs, Excise and Service Tax Appellate Tribunal, Chennai*, R. Sudhakar and R. Karupiah, JJ. CIVIL MISC. APPEAL NOS. 278 & 2053 OF 2014, M.P. NOS. 1 & 1 OF 2014 dated: October 30, 2014 [(2014) 52 Taxmann.com 320 (Madras)]*

CENTRAL EXCISE

Notifications/Circulars

➔ Amendment of notification no 12/2012 - Central Excise dated 17/03/2012 so as to increase the Basic Excise Duty (BED) on petrol (both branded as well as unbranded) and diesel (both branded as well as unbranded) vide notification no. 24/2014-CE, dt. 02-12-2014.

➔ Grants exemption from Basic Excise Duty to goods donated or purchased out of cash donations for the relief and rehabilitation of people affected by the floods in the State of Jammu and Kashmir vide notification no. 25/2014-CE, dt. 11-12-2014.

Case Laws

➔ **Cenvat Credit : Services by way of : (i) Medical Group Insurance; (ii) Consultancy Services in relation to tax compliances; (iii) Outdoor Catering Services; and (iv) Subscription for International Taxation, are eligible for input service credit**

Rule 2(l) of the Cenvat Credit Rules, 2004 - CENVAT Credit - Input Service - Insurance Services - Period from January 2011 to March 2011 - Assessee took credit of Medical Group Insurance services - Department sought to deny credit relying upon amended definition of input service - HELD: Amended definition could not be applied for period prior to 1-4-2011 - Hence, Medical Group Insurance services are eligible for input service credit [Paras 4 & 5] [In favour of assessee]

Rule 2(l) of the Cenvat Credit Rules, 2004 - CENVAT Credit - Input Service - Consultancy/Legal Services - Period from January 2011 to March 2011 - Consultancy Services comprised of payment of invoices of charges involved in relation to filing of tax return in US falls within definition of "input service" - Similarly, Legal Consultancy Services are also eligible [Para 6] [In favour of assessee]

Rule 2(l) of the Cenvat Credit Rules, 2004 - CENVAT Credit - Input Service - Catering Services - Period from January 2011 to March 2011 - Where adjudicating authority had allowed credit of 'outdoor catering' save and except for a partial disallowance in respect of consumption of alcoholic beverages, such order was valid [Para 7] [Partly in favour of assessee]

Rule 2(l) of the Cenvat Credit Rules, 2004 - CENVAT Credit - Input Service - General - Period from January 2011 to March 2011 - Assessee paid 'Subscription for International Taxation' for providing information and knowledge pertaining to International Taxation for tax compliance - HELD : This fulfils description of expression "input service" in Rules [Para 8] [Partly in favour of assessee]

Rule 2(l) of the Cenvat Credit Rules, 2004, read with section 35G of the Central Excise Act, 1944, section 83 of the Finance Act, 1994 and section 130 of the Customs Act, 1962 - CENVAT Credit - Input Service - Advertisement and Sales Promotion - Period from Janu-

ary 2011 to March 2011 - In relation to credit pertaining to 'Advertising and Sponsorship Services', Tribunal remanded matter back to adjudicating authority for being dealt with in accordance with law - Department challenged same in appeal before High Court - HELD : No substantial question of law arose; hence, appeal was dismissed [Para 9] [Partly in favour of assessee]

Circulars and Notifications: *Notification No. 3/2011-C.E.(N.T.), dated 1 March, 2011*

Source: *High Court of Allahabad, Commissioner of Central Excise v. HCL Technologies,*

Dr. Dhananjaya Yeshwant Chandrachud, Cj. And Pradeep Kumar Singh Baghel, J. Central Excise Appeal Defective No. 118 of 2014† dated: November 11, 2014

[2014] 52 taxmann.com 393 (Allahabad)

➔ **Supreme Court directed Tribunal to reconsider whether embroidery on fabrics was liable to excise duty**

Excise & Customs : Where Tribunal held that processing (viz. bleaching, dyeing, scouring, stentering etc.) and clearing embroidered fabrics is not liable to excise duty, Supreme Court remanded matter back to Tribunal for consideration afresh.

Section 2, read with First Schedule, of the Central Excise Tariff Act, 1985 and section 2(f) of the Central Excise Act, 1944 - Classification - Embroidered fabrics - Period from 16-3-1995 to 10-8-1995 - Assessee was processing (viz. bleaching, dyeing, scouring, stentering etc.) and clearing embroidered fabrics - Such processing was not manufacture prior to 16-3-1995 - Department argued that said goods were classifiable under Chapter 58 and as per Note 8 thereto, said processing was deemed manufacture - Tribunal held that : (a) Note 8 to chapter 58 does not apply to processing of embroidery on grey fabrics; (b) embroidery even after processing remains to be classifiable under chapter heading 5805.90 only; (c) processing of embroidery cannot take it out of purview of heading 5805 and make it classifiable under chapter 52 or 55 - On appeal to Supreme Court - HELD : In view of judgment in *CCE v. Amar Fabrics (P.) Ltd.* 2011 (266) ELT 419 (SC), matter was remanded back to Tribunal for consideration afresh [Paras 1 and 2] [Matter remanded]

Source: *Supreme Court of India, Commissioner of Central Excise, Mumbai-IV v. Shanti Textiles, R.M. Lodha and Anil R. Dave, JJ. Civil Appeal Nos. 3595-3596 OF 2008 & 2403 OF 2009 dated: †JULY 2, 2012 [(2014) 52 Taxmann.com 4 (SC)]*

➔ **SSI exemption applies only to domestic clearances and not to exports made under rebate claim**

Excise & Customs : SSI-exemption applies to domestic clearances made by assessee; it does not apply to exports made on payment of duty under claim for rebate

Excise & Customs : When demand arises due to lesser duty paid on exports and any duty paid on exports was eligible as rebate/refund, there could not have been intention to evade any duty and hence, penalty was not leviable

Section 5A, read with section 11AC of the Central Excise Act, 1944 and rule 18 of the Central Excise Rules, 2002 - Exemptions - Central Excise - SSI/Threshold Exemption - Assessee availed partial exemption under Notification No. 9/2003-CE for : (i) domestic clearances, and (ii) exports to Bangladesh, Kuwait, etc. on payment of duty - Department argued that said exemption was not available in respect of 'export clearances' and raised demand with penalty - HELD : Notification No. 9/2003-CE exempts clearances of specified goods for home consumption; therefore, same is not applicable to 'export clearances' - Clause 4.1 of Chapter 8 of Central Excise manual providing that 'export goods shall be assessed to duty in same manner as goods for home consumption' means to say that rate of duty should be in terms of Tariff read with any exemption notification - Since Notification No. 9/2003-CE is not applicable to exports, hence, even as per Central Excise Manual, rate of duty on exported goods cannot be in as per said Notification - However, since, in any case, duty paid was refundable to assessee; assessee could not have had an intention to evade any duty - Hence, demand was upheld and penalties were set aside [Paras 3 and 4] [Partly in favour of assessee]

Circulars and Notifications: Clause 4.1 of Chapter 8 of Central Excise manual, Notification No. 9/2003-CE, dated 01-03-2003

Yashpal Sharma, DR for the Appellant. G.S. Sandhu, Advocate for the Respondent

Source: CESTAT, New Delhi Bench, Commissioner of Central Excise, Chandigarh v. SMT Machines India Ltd., *Justice G. Raghuram, President and R.K. Singh, Technical Member, Final Order Nos. 54108 & 54109/2014 Appeal Nos. E/3723-3724 Of 2005 dated: October 1, 2014 [2014] 52 taxmann.com 321 (New Delhi - CESTAT)

CUSTOMS

Notifications/Circulars

➔ Amendment of notification No.12/2012-Cus dated 17.3.2012 so as to extend zero customs duty on chickpeas (gram) up to 31st March, 2015 vide *Notification No. 39/2014-Cus, dt. 31-12-2014*.

➔ Amendment of notification No. 46/2011-Customs dated 01.06.2011 so as to provide deeper tariff concessions in respect of specified goods when imported from ASEAN under the India-ASEAN Free Trade Agreement w. e. f. 01.01.2015 vide *notification no. 38/2014-Cus, dt. 29-12-2014*.

➔ Amendment of notification No. 53/2011-Customs dated 01st July, 2011 so as to provide deeper tariff concessions in respect of specified goods imported from Malaysia under the India-Malaysia Comprehensive Economic Cooperation Agreement (IMCECA) w. e. f. 01.01.2015 vide *notification no. 37/2014-Cus, dt. 29-12-2014*.

➔ Amendment of notification No. 152/2009-Customs dated

31.12.2009 so as to provide deeper tariff concessions in respect of specified goods imported from Korea RP under the India-Korea Comprehensive Economic Partnership Agreement w. e. f. 01.01.2015 vide *notification no. 35/2014-Cus, dt. 29-12-2014*.

➔ Amendment of Notification No. 012/2012 Customs dated 17.03.2012 so as to increase duty on crude and refined edible oils vide *notification no. 34/2014-Cus, dt. 24-12-2014*.

➔ Re-warehousing of goods imported and/or procured indigenously by EOU/EHTP/STP/BTP units:

Attention is drawn to the self-bonding/warehousing procedure on the above subject specified in Circular No. 19/2007-Cus dated 03.05.2007. It has been brought to the notice of the Board that the units which are under the said procedure are facing difficulty in obtaining deemed export benefits as the ARE-3 is not certified by the Central Excise authorities. The matter was examined in consultation with the DGFT and DG (EP). To resolve the issue and facilitate trade, it has been decided by the Board to provide that the Superintendent – in-charge of the unit shall make two legible photocopies of the original copy of ARE-3 (that bears his counter signature) and attest each of them as true copies with his dated signature. One attested copy shall be kept in the Range office for records and the other one shall be handed over (against dated vide *Circular No.16/2014-Customs dated: 18th December, 2014*).

➔ Grants exemption from the duties of Customs to goods imported for donation for the relief and rehabilitation of people affected by the floods in the State of Jammu and Kashmir vide *notification No. 33/2014-Cus, dt. 11-12-2014*.

➔ Anti-dumping duty

i. Impose of definitive anti-dumping duty on imports of Clear Float Glass originating in or exported from Pakistan, Saudi Arabia and United Arab Emirates (UAE) vide *notification no. 48/2014-Cus (ADD), dt. 11-12-2014*.

ii. Levy of definitive anti-dumping duty on imports of cable ties, originating in or exported from People's Republic of China and Chinese Taipei, for a period of five year vide *notification no. 47/2014-Cus (ADD), dt. 09-12-2014*.

iii. Impose of anti-dumping duty on Sodium Nitrite originating in or exported from China PR vide *notification no. 46/2014-Cus (ADD), dt. 08-12-2014*.

SEBI

Notifications/Circulars

➔ **Modification to Offer for Sale (OFS) of shares through stock exchange mechanism**

Comprehensive guidelines on sale of shares through Offer for Sale

mechanism were issued vide circular no CIR/MRD/DP/18/2012 dated July 18, 2012. These guidelines have been modified vide circulars dated CIR/MRD/DP/04/2013 dated January 25, 2013, CIR/MRD/DP/17/2013 dated May 30, 2013 and CIR/MRD/DP/ 24 /2014 dated August 08, 2014. To make it easier for retail investors to participate in OFS, it has been decided that seller may give an option to retail investors to place their bid at cut-off price in addition to placing price bids.

In order to do so, the following conditions shall be applicable to the OFS:

- Where option for cut-off price is given, Sellers shall mandatorily announce floor price latest by 5 pm on T-1 day to stock exchange.
- Exchanges will decide upon the quantity of shares eligible to be considered as retail bids, based upon the floor price declared by the seller.
- There shall be no indicative price for the retail portion of OFS. Retail investors may enter a price bid or opt for bidding at cut-off price.
- Margin for bids placed at cut-off price shall be at the floor price and for price bids at the value of the bid. Allocation to retail investors shall be made based on the cut-off price determined in the non-retail category.
- Seller may offer discount to retail investors on the said cut off price. Retail bids below the cut-off price shall be rejected.
- Retail bids at cut-off price shall be allocated on proportionate basis in case of over subscription. Any unsubscribed portion of retail category after allotment shall be eligible for allocation in the non-retail category.
- In partial modification to earlier circular, in respect of bids in the retail category, clearing corporation shall collect margin to the extent of 100% of order value in cash or cash equivalents. Pay-in and pay-out for retail bids shall take place as per normal secondary market transactions.

Source: Circular - CIR/MRD/DP/32 /2014 dated: December 01, 2014

➤ Facilitating transaction in Mutual Fund schemes through the Stock Exchange Infrastructure

SEBI vide circular no. CIR/MRD/DSA/32/2013 dated October 04, 2013 had permitted Mutual Fund Distributors to use recognized stock exchanges' infrastructure to purchase and redeem mutual fund units directly from Mutual Fund/Asset Management Companies on behalf of their clients. In this regard, in order to broad base the reach of this platform, it is decided to permit non demat transactions also in the Mutual fund through stock exchange platform.

Source: Circular - CIR/MRD/DSA/33/2014 dated: December 09, 2014

➤ Single Registration for Depository Participants

As per the amendment, the existing requirement of obtaining certificate of initial

registration to act as a participant and subsequently permanent registration to continue to act as a participant for each depository

has been done away with. Henceforth, one certificate of initial registration and subsequently permanent registration through any depository shall be required after commencement of the Securities and Exchange Board of India (Depositories and Participants) (Amendment) Regulations, 2014. For the purpose of implementing the above registration requirements, the following guidelines are being issued:

- a. If a new entity desires to act as a participant in any of the depository, then the entity shall apply to SEBI for certificate of initial registration through the concerned depository in the manner prescribed in the DP Regulations.
 - b. If an entity has been granted a certificate of registration to act as a participant through one depository and wishes to act as a participant with the other depository then it shall directly apply to the concerned depository for approval in the manner as prescribed in the DP Regulations. The concerned depository, on receipt of the application, may grant approval to the entity after exercising due diligence and on being satisfied about the compliance of all relevant eligibility requirements including the following:
 - i. The applicant, its directors, proprietor, partners and associates satisfy the Fit and Proper Criteria as defined in the SEBI (Intermediaries) Regulations, 2008;
 - ii. The applicant has taken satisfactory corrective steps to rectify the deficiencies or irregularities observed in the past inspections or in case of actions initiated/ taken by SEBI/ depository(s) or other regulators. The depository may also seek details whether the Board of the applicant is satisfied about the steps taken. They may also carry out inspection, wherever considered appropriate;
 - iii. Recovery of all pending fees/ dues payable to SEBI and depository; and
 - iv. Payment of registration fees as prescribed in the DP Regulations.
- The depositories shall report to SEBI about the approval as stated above on a monthly basis.

Reference: Notification No. LAD-NRO/GN/2014-15/18/1952 dated December 24, 2014 amending the SEBI (Depositories and Participants) Regulations, 1996.

Source: Circular - CIR/ MIRSD/5/ 2014 December 30, 2014

➤ IPO bound companies will have more legroom to sell shares to foreign investors

Companies headed for an initial public offering (IPO) will have more legroom to sell shares to foreign investors. They need not reserve 25% of the share sale for domestic mutual funds and insurers if the regulator is convinced of the disclosures regarding valuation and justification of premium. Investment bankers, with the mandate to lead some of the maiden offerings, have learnt this from recent conversations with officials of capital market regulator SEBI.

Source: Economic Times | Dec 29, 2014

➔ New corporate governance norms top SEBI's policy action list in 2014

Introduction of new corporate governance norms was one of the major milestones of the market regulator's policy initiatives in 2014. The new rules require companies to obtain shareholders' approval for related-party transactions, establish whistle-blower mechanism and make elaborate disclosures on pay packages. Another decision that will have far reaching consequences was Insider Trading Regulations. SEBI had widened the definition of insider by including persons connected on the basis of being in any contractual, fiduciary or employment relationship that allows such persons access to unpublished price sensitive information.

<http://www.thehindubusinessline.com/todays-paper/tp-markets/new-corporate-governance-norms-top-sebis-policy-action-list-in-2014/article6740037.ece>

INCOME TAX

Notifications/Circulars

➔ Govt. notifies 'Reliance Retirement Fund' as pension fund for purpose of Sec. 80C deduction for the A.Y.2015-16.

In exercise of the powers conferred by clause (xiv) of sub-section (2) of Section 80C of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby specifies the Reliance Retirement Fund set up by the Reliance Mutual Fund registered under the Securities and Exchange Board of India (Mutual Fund Regulations, 1993) having registration No. MF/022/95/1, dated the 30th June, 1995 as a pension fund for the purposes of the said clause for the assessment year 2015-16 and subsequent assessment years vide *Notification No. 90/2014/F. No.178/63/2012-ITA-I*] dated: 23rd December, 2014.

Read more at:

<http://www.taxmann.com/topstories/10401000000042713/govt-notifies-reliance-retirement-fund-as-pension-fund-for-purpose-of-sec-80c-deduction.aspx>

➔ CBDT signs first bilateral Advance Pricing Agreement

The Central Board of Direct Taxes (CBDT) signed a bilateral Advance Pricing Agreement (APA) with a Japanese company. "This is India's first bilateral APA. The APA is for five years," an official statement said. APAs will improve the investment climate in the country, it said, adding the APA has been finalized in a period of about one-and-a-half years, which is shorter than time normally taken in finalizing APAs internationally. The scheme has been introduced to bring about certainty and uniformity in transfer pricing matters of multinational companies and reducing litigation.

Read more at:

<http://www.thehindu.com/business/Industry/cbdt-signs-first-bilateral-advance-pricing-agreement/article6708879.ece>

Source: *The Hindu* | December 19, 2014

➔ Percentage of Government Grant for considering university, hospital etc. as substantially financed by the Government for the purposes of clause (23C) of section 10.

For the purposes of sub-clauses (iiiab) and (iiiac) of clause (23C) of section 10, any university or other educational institution, hospital or other institution referred therein, shall be considered as being substantially financed by the Government for any previous year, if the Government grant to such university or other educational institution, hospital or other institution exceeds fifty percent of the total receipts including any voluntary contributions, of such university or other educational institution, hospital or other institution, as the case may be, during the relevant previous year." vide *Notification No. 79/2014/F.No.142/12/2014-TPL* dated: 12th December, 2014.

Case Laws

➔ ITAT: Denies 'capital loss' carry-forward to amalgamated co. absent specific provisions u/s 74

ITAT rules that amalgamated company cannot set-off and carry forward losses computed under head "capital gains" arising to erstwhile amalgamating companies absent any specific provision in Sec 74; States that Sec 72A introduced vide Finance Act 1977 was only restricted to carry forward of accumulated losses and unabsorbed depreciation to be set-off while computing income under head "profits and gains of business or profession" and not for any other head of income including capital gains or speculation business; Highlights it is not the role of the Courts, specifically Tribunals, to read specific provisions into general provisions; Legislative intent has to be inferred and applied, had legislature intended to allow set-off and carry forward of loss of capital gains amalgamation & demerger cases, legislature would have specifically provided for it : Mumbai ITAT. Source: *The ruling was delivered by ITAT bench of Shri D. Karunakara Rao and Shri Amit Shukla.*

Mr. Farooq Irani argued on behalf of the assessee and Revenue was represented by Mr. A K Kardam.

[TS-620-ITAT-2014(Mum)]

➔ T/ILT: Where payments were made by assessee to foreign parties not only for imports of plant, equipment and machinery but also for incidental services in connection with installation and commissioning of these machines, payments for incidental services was not liable to be taxed in India as fee for technical services and, accordingly, assessee was not required to deduct tax at source from these payments

FACTS

- During the scrutiny, the Assessing Officer (AO - TDS) noticed that the assessee has made certain foreign remittances without deducting tax at source. When assessee was asked the reasons of doing so, it was explained to the AO-TDS that the income embedded in these payments was not chargeable to tax in India as these payments were for imports of plant, equipment and machinery. It was also contended that as the payments were made for purchases, which did not give rise to taxability of related income in India, there was no requirement of tax withholding requirement from these payments.
- The AO-TDS was of the view that the payment was not only for purchases but also for incidental services in connection with installation and commissioning of these machines, and, accordingly, the assessee was required to deduct tax at source from these payments.
- On appeal, the Commissioner (Appeals) upheld the order of the AO-TDS.

HELD

- The assessee, had fairly submitted that the taxability of such payments as FTS or FIS was taken as granted, without appreciating this nuance of the matter, so far as standalone payments for these services were concerned, but neither such a conduct on the part of the assessee can constitute estoppel against the correct legal position nor would it imply that the a part of sale consideration can be fictionally treated as towards such services and then treated as FTS or FIS while the scope of such payments, under the tax treaties, is confined to amounts actually paid as FTS or FIS. The taxability of an income is to be decided on the basis of the provisions of law and not conduct of the parties. Just because the assessee has accepted a taxability in respect of some other transaction, no matter howsoever related, the legal remedies available to the assessee cannot be negated. There cannot be, and there is no, estoppel against the law. In view of the above discussions, in a situation in which there are specific PE clauses in relation to a particular type of services, which are covered in the scope of services covered by the scope of the 'fees for technical services' or 'fees for included services', the taxability of consideration for such services must remain confined to taxability of profits under the relevant specific PE clause. The provisions for taxability as FTS or FIS will not come into play in such cases.[Para 46]
- By no stretch of logic, installation or assembly activities even involve transfer of technology in the sense that recipient of these services can perform such services on his own without recourse to the service provider, nor has it been the case of the authorities below. For this short reason alone, the installation, commissioning or assembly activities cannot constitute fees for technical services, or fees for included services- as these are termed in Indo-US tax treaty.[Para 48]
- The same is the position with regard to the Indo Belgium tax treaty by the virtue of following MFN (most favoured nation) clause. [Para 49]
- Installation, commissioning or assembly of a plant, machinery or equipment , or any supervision activity connected therewith,

is ancillary and subsidiary, as well as inextricably and essentially linked, to sale of such a plant equipment or machinery; therefore, any consideration for such installation, commissioning or assembly activities, or supervision services cannot be included in fees for included services under Indo-Swiss tax treaty. Accordingly, even if there be any income embedded in such payments, same cannot be brought to tax, in view of provisions of Article 12(5) (a) of Indo Swiss tax treaty, in hands of Swiss vendors as well. [Para 53]

- As corresponding provisions also find place in Indo-UK [Article 13(5)(a)] and Indo-US [Article 12(5)(a)] tax treaties, for this reason as well and for material facts being similar, consideration for installation, commissioning or assembly activities, or supervision services in respect thereof, can also not be subjected to tax in India in hands of UK and US based vendors either.[Para 53]
 - Under the scheme of allocation of taxing rights under the related tax treaties, India does not have the right to tax income, even if any, in respect of rendition of installation, commissioning or assembly services, embedded in the invoice value of the related equipment, plant or machinery.[Para 56]
 - In case the Assessing Officer can bring any material on record which can demonstrate that the vendors had a PE in India, and the income embedded in the impugned payments was indeed liable to be taxed in India, to that extent and in accordance with the provisions of law, the Assessing Officer will be at liberty to raise the fresh demand under section 201 r.w.s. 195.[Para 58]
- Source: In The ITAT Jabalpur Bench, Birla Corporation Ltd. v. Assistant Commissioner of Income-tax (TDS), Jabalpur, Pramod Kumar, Accountant Member and C.M. Garg, Judicial Member, It Appeal Nos. 251 and 252 (Jabalpur) of 2013 [Assessment Years 2010-11 and 2011-12] dated: December 24, 2014 [2015] 53 taxmann.com 1 (Jabalpur - Trib.)*

➔ HC: Upholds Sec 80HHC deduction from “total income”, before unabsorbed losses and depreciation effected

HC upholds Sec 80HHC deduction claim from total income before deduction for depreciation and unabsorbed losses is effected; Observes Sec 80HHC specifically provides that deduction is required to be made from 'total income' in contrast to Sec 80HHB where there is no reference to 'total income' or Sec 80HHA which specifically refers to deduction from 'gross total income'; Holds when law requires deduction from 'total income', the inescapable conclusion is that the deduction must take place, at the threshold, before the left over total income referable to that activity merges in the other head of the income, thereafter other deductions, such as depreciation and unabsorbed losses are to be effected; Further, states that assessee must be given facility as to stage of deduction and there is no justification to insist that it shall be the first of all deductions; Relies on SC rulings in Shirke Constructions and Williamson Financial Services. [TS-602-HC-2014(AP)]



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